

REMARKS

Reconsideration and allowance of the subject patent application are respectfully requested.

Claims 1-3, 5-8, 10, 11, 14, 15, 18 and 20-23¹ were rejected under 35 U.S.C Section 102(b) as allegedly being "anticipated" by Shaffer (EP 0 848 560). For the reasons set forth below, Applicants traverse this rejection.

Claim 1 calls for a communication system that includes an information server and a communication apparatus that includes "communication circuitry capable of performing communication with the information server." A non-limiting example embodiment of this communication system is shown in Figure 1 in which a communication apparatus 1 communicates with an information server 2. The communication apparatus may, for example, be a mobile terminal. Claim 1 further calls for the communication apparatus to include a connection information storage section and a communication mode switching section for controlling the switching of communication mode with the information server from a first communication mode to a second communication mode.

Shaffer discloses no such communication apparatus. Instead, Shaffer discloses that communication mode switching is performed by equipment disposed between remote sites that are performing communication. As is plainly evident from Figure 2, the managing system of Shaffer is disposed in the communication path between the remote sites 46, 48 and 50. This managing system controls interfaces 44 to connect these remote sites in various communication modes based on quality of service information and on tariff information. Specifically, "[t]he mode select/controller is connected to all of the interface devices 44 and enables the devices on a session-by-session basis to connect various multimedia sites 46, 48 and 50 over the selected communication mode." Shaffer, col. 8, lines 18-22.

Because the remote sites performing communication in Shaffer are not involved in the determination of when (or if) to switch communication modes, there is no disclosure or suggestion in Shaffer, for example, that a communication apparatus, performing communication with an information server, include a connection information storage section or a communication

¹ Claims 15, 18 and 20-23 are not identified in the statement of the rejection on page 2 of the office action. However, the office action treats these claims on pages 7-9 as allegedly being anticipated by Shaffer.

mode switching control section as claimed. Because of the above-noted deficiencies of Shaffer, Applicant respectfully submits that Shaffer cannot anticipate the subject matter of claim 1 or of those claims that depend therefrom.

Additionally, for a plurality of communication modes, Shaffer discloses changeover inside the sessions of the communication modes based on the continuous monitoring of QoS (quality of service). In Shaffer, QoS for the plurality of communication modes is monitored continuously. Consequently, Shaffer appears to suggest that the monitoring of QoS is carried out in a state in which connections in a plurality of communication modes have already been established. That is, the changeover of communication modes in Shaffer is a mere changeover of modes without releasing the connections.

The office action states that in Shaffer "in the event that certain thresholds are not met, the connection switches to another mode, still continuously monitoring the former communication mode." This view suggests that in Shaffer when a connection in a new mode is established, the connection in the former communication mode is still established.

Claim 1 has been amended to describe releasing the connection of the communication circuitry with the information server in the first communication mode in a state in which a connection of the communication apparatus and the information server in the second communication mode is not established and establishing a connection with the information server in the second communication mode in a state in which a connection of the communication apparatus and the information server in the first communication mode is not established. Thus, in contrast to the characterization of Shaffer in the office action, when, for example, a connection in the second communication mode is established, a connection in the first communication mode is not established. For this additional and independent reason, claim 1 is not anticipated by Shaffer.

In connection with the claimed communication apparatus, the various references in the office action to the Shaffer description do not establish that this document shows a communication apparatus as claimed. For example, the office action contains various references to the disclosure in Shaffer at col. 3, lines 9-16 and col. 3, lines 21-25. Applicants note that this portion of Shaffer in fact provides a summary of U.S. Patent No. 5,446,730 to Lee et al. It is of course permissible to rely on the contents of such summaries. However, in this instance, it is not

clear how this description of Lee et al. is at all related to the Shaffer system or how this description constitutes a disclosure of the claimed communication apparatus.

In regard to connection restoration, the office action further states that "[i]f it is decided that the new mode does not meet the threshold requirements, the connection may return to the previous connection." 7/21/2005 Office Action, page 14. However, the restoration of claim 1 does not refer to the restoration of the communication mode, but of the condition of communication connection of the communication apparatus with the information server.

Independent claim 10 is directed to a communication apparatus which includes a communication mode switching control section which monitors a rate of information transfer from an information server and compares the monitored information transfer rate and a reference value. In cases in which the monitored information transfer rate does not exceed the reference value, connection information is stored in a connection information storage section based on a condition of communication connection of the communication apparatus and the information server at that time, the communication in the first communication mode is disconnected, a connection with the information server in the second communication mode is established, and the communication connection condition is restored based on the stored connection information.

Shaffer does not disclose a communication apparatus that monitors a rate of information transfer and compares this rate to a reference value. To the extent the office action maintains that Shaffer discloses monitoring the information transfer rate, this monitoring is clearly performed by the system in Figure 2, not by a communication apparatus for performing communication with an information server as claimed. As such, Applicants respectfully submit that Shaffer does not anticipate claim 10.

Claim 10 has been amended along the lines of the amendment to claim 1 discussed above. Consequently, Shaffer does not anticipate claim 10 for this additional and independent reason.

Claim 11 is directed to a communication system including an information server and a communication apparatus. The information server includes communication circuitry that sends a communication mode switching instruction to the communication apparatus if an information transfer rate does not exceed a reference value. The communication apparatus switches communication modes based on receipt of this instruction.

Applicants find no disclosure whatsoever in Shaffer of an information server sending a communication mode switching instruction to a communication apparatus. Here again, Shaffer provides no detailed description regarding the remote sites and there is no basis for any assertion that the server instructs the communication apparatus to switch communication mode. In Shaffer, communication mode switching is performed without the involvement of the remote sites. As such, Shaffer cannot anticipate claim 11.

In response to the remarks in the prior response directed to claim 11, the office action states that "Applicant asserts that no instruction, in the form of a digital signal, is sent to the communication apparatus in Shaffer to cause the apparatus to switch between modes." The office action concludes that because there is no mention of a digital signal in claim 11, the argument in the prior response is moot. First, Applicants have reviewed the prior response and do not find any remarks mentioning a "digital signal" in connection with claim 11 or otherwise. Second, claim 11 calls for a switching instruction to be transmitted from an information server. Whether this "instruction" is viewed as a "signal" or a "digital signal", there is nonetheless no disclosure of any such transmission from an information server to effect mode switching as claimed. Mode switching takes place in the components 26, 28, 30, 44, etc. in Figure 2 based on monitoring performed by these components, not based on an instruction from an information server.

Claim 11 has been amended along the lines of the amendment to claim 1 discussed above. Consequently, Shaffer does not anticipate claim 11 for this additional and independent reason.

Independent claim 15 is directed to a communication apparatus for communicating with an information server using different communication modes. The communication apparatus comprises a communication section for establishing communications with the information server in the different communication modes, a storage section, and a communication mode switching control section for controlling the switching of communication modes with the information server. As discussed above, Shaffer does not disclose a communication apparatus for communicating with an information server, wherein the communication apparatus includes a communication mode switching control section as claimed. Consequently, Shaffer does not anticipate claim 15 or the claims that depend therefrom.

Claim 15 has been amended along the lines of the amendment to claim 1 discussed above. Consequently, Shaffer does not anticipate claim 15 for this additional and independent reason.

The dependent claims 2, 3, 5-8, 14, 18 and 20-23 are believed to be allowable because of their respective dependencies and because of the additional patentable features recited therein.

Claim 4 was rejected under 35 U.S.C. Section 103(a) as allegedly being "obvious" over Shaffer in view of Kunz (U.S. Patent No. 6,223,221). Kunz is referenced in the office action as disclosing the measuring of download and connection time to perform a certain task. While not conceding, among other things, the propriety of the proposed combination, Kunz does not remedy the deficiencies of Shaffer in connection with claim 1 (from which claim 4 depends). As such, even if these documents were combined as proposed, the subject matter of claim 4 would not result.

Claim 9 was rejected under 35 U.S.C. Section 103(a) as allegedly being "obvious" over Shaffer in view of Watson (U.S. Patent No. 6,631,409). Watson is referenced in the office action as disclosing the overriding default settings. While not conceding, among other things, the propriety of the proposed combination, Watson does not remedy the deficiencies of Shaffer in connection with claim 1 (from which claim 9 depends). As such, even if these documents were combined as proposed, the subject matter of claim 9 would not result.

Claims 12 and 13 were rejected under 35 U.S.C. Section 103(a) as allegedly being "obvious" over Shaffer in view of Davis (U.S. Patent No. 5,583,922). Davis is referenced in the office action as disclosing switching back to voice mode once data transmission is completed. While not conceding, among other things, the propriety of the proposed combination, Davis does not remedy the deficiencies of Shaffer in connection with claim 1 (from which claims 12 and 13 each depends). As such, even if these documents were combined as proposed, the subject matter of claims 12 and 13 would not result.

Claims 16 and 17 were rejected under 35 U.S.C. Section 103(a) as allegedly being "obvious" over Shaffer.


Even assuming for the sake of argument that an URL were to be used as connection information, Shaffer is nonetheless deficient with respect with to claim 15, from which claim 16 depends.

With respect to claim 17, Applicant strongly disagrees that it would have been obvious to embody the communication section, the storage section and the communication mode switching control section in a portable terminal. The system of Shaffer is disclosed as being arranged to establish communication between remote sites and is shown in Figure 2 as being disposed between these remote sites. In view of the nature of the Shaffer system, there is no basis for concluding that the elements of this system would have been provided in a portable terminal. The office action makes reference to the modem of Figure 1 and to a "computer" allegedly shown in Figure 2 in support of the contentions therein, but it is not clear how these two statements are suggestive of a "portable terminal" as claimed.

Claim 19 was rejected under 35 U.S.C. Section 103(a) as allegedly being "obvious" over Shaffer in view of McLain (U.S. Patent No. 6,493,758). McLain is described in the office action as disclosing the placing of a limit on data to be downloaded from a server, such that if it exceeds a reference value, "discontinuation" will take place. While McLain does describe a user-specified download limit, McLain teaches that exceeding this limit results in not downloading information. There is no disclosure of using such a limit as a basis for switching communications modes because the intent of McLain is to "discontinue" communication, not to provide an alternate mode for doing so. As such, the proposed combination of Shaffer and McLain would not have resulted in the subject matter of claim 19.

The pending claims are believed to be allowable and favorable office action is respectfully requested.

Respectfully submitted,
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